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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE, CALIFORNIA**

8 Xiling CHEN )  
9 )  
10 Plaintiff, ) Case No. C 07-4698 IW

11 vs. )  
12 Alberto Gonzales, Attorney General of the ) PLAINTIFF'S OPPOSITION  
13 United States; Michael Chertoff, Secretary of the ) TO DEFENDANTS' MOTION FOR  
14 Department of Homeland Security; Emilio Gonzalez ) SUMMARY JUDGMENT  
15 Director of United States Citizenship & Immigration)  
Services; Robert Mueller, Director of the Federal ) Date: April 21, 2008  
16 Bureau of Investigations; Gerard Heinauer, ) Time: 9:00 am  
Director of the Nebraska Service Center ) Courtroom: 8, 4<sup>th</sup> Floor  
)

17 Defendants )  
18 \_\_\_\_\_ )  
Plaintiff Xiling Chen hereby replies to Defendants' motion for summary judgment.

19 Defendants attempt to justify their delay in adjudicating Plaintiff's application for  
20 permanent residency, now pending for three years and nine months, by confusing their  
21 discretion to approve or deny an application to adjust status with their non-discretionary to  
22 make a decision on the application. Defendants also attempt to justify their delay in the  
23 Plaintiff's name check by using national security as pretence. The reality is that Defendants  
24 have sat on Plaintiff's application for a clearly unreasonable amount of time —even after  
25 the petition for writ of mandamus was filed with this Court.

**A. All defendants listed are proper defendants.**

27 The Department of Homeland Security is the agency responsible for implementing the  
28 Immigration and Nationality Act, so are the United States Citizenship & Immigration

1 Services and the Service Centers. In particular, Robert Mueller, as the Director of the  
 2 Federal Bureau of Investigations, should be the most important defendant in this case,  
 3 because the FBI is responsible for the name checks. **As admitted by the Defendants, “the**  
 4 **Plaintiff’s application is ready to be adjudicated except for her pending background**  
 5 **and security check”**. See Page 2, the Defendant’s Motion for Summary Judgment. The  
 6 USCIS has been giving the standard reply to all inquiries for all applications pending for  
 7 name checks, that the Service has NO control over how long it takes FBI to clear the case.  
 8 If that is the case, and the FBI is to be dismissed as the Defendant, then who is going to be  
 9 responsible for the excessive delays on the Plaintiff’s name check?

10

11       **B. Relief is warranted under the Mandamus Act and the APA**

12           **(i) Nondiscretionary duty**

13 Defendants first assert that Plaintiff’s motion for summary judgment should be  
 14 denied because the “adjustment of status is committed to the Secretary’s discretion as a  
 15 matter of law” and “the statute does not set forth anytime frame in which a determination  
 16 must be made on an application to adjust status”. See Page 3, the Defendant’s Motion for  
 17 Summary Judgment. Contrary to Defendants’ assertion, under the Immigration and  
 18 Nationality Act and its implementing regulations, Defendants do have a duty to act on these  
 19 applications. See 8 U.S.C. § 1255(a); 8 C.F.R. § 245.2(a)(5). Thus, Defendants cannot  
 indefinitely delay the adjudication of these applications.

20       The Defendants confuse a discretionary duty to approve an application for residency with  
 21 their non-discretionary duty to make a decision, one way or another, on an application. The  
 22 Plaintiff does not ask this Court to compel the Defendants to grant her application for residency  
 23 but rather asks the Court to compel the Defendants to adjudicate her application. Numerous  
 24 Courts, including the Northern District of California, have held that there is a non-discretionary  
 25 duty to adjudicate adjustment of status applications. *See Aboushaban v. Mueller*, 2No. C 06-  
 26 1280 BZ, 2006 WL 3041086 at \*2 (N.D. Cal. Oct. 24, 2006) (Judge Bernard Zimmerman  
 27 reading the statutory text of 8 C.F.R. § 209.2, (which he deemed similar to 8 C.F.R. § 245.2) as  
 28 “creating a non-discretionary duty to adjudicate the Plaintiffs [adjustment of status]  
 application); *Iddr v. INS*, 301 F.3d 492, 500 (7th Cir. 2002) (INA and relevant regulations

1 “confirm that the INS did have the duty to adjudicate the appellants’ [adjustment of status]  
 2 applications in a reasonable period of time); *Yu v. Brown*, 36 F. Supp.2d 922, 931  
 3 (D.N.M.1999) (Commenting on 8 U.S.C. § 1103 and relevant regulations, “The language of the  
 4 statute and these regulations is mandatory not discretionary. Thus regardless of the ultimate  
 5 decision, INS has a non-discretionary, mandatory duty to act on Plaintiffs’ [adjustment of  
 6 status] applications.”) In the words of the *Yu* Court, “[t]his argument has been flatly rejected  
 7 numerous times by other courts.” *See Yu*, 36 F.Supp.2d at 931. [*Citing Forest Guardians v.*  
 8 *Dombeck*, 131 F.3d 1309 (9th Cir. 1997); *Mt. Emmons Mining v. Babbitt*, 117 F.3d at 1172  
 9 (10th Cir.1997); *Atlantic & Gulf Stevedores, Inc. v. Donovan*, 274 F.2d 794, 798 (5th Cir.  
 10 1960); *Mastrapas qua v. Shaughnessy*, 180 F.2d 999, 1002 (2d Cir.1950); and *Dabone v.*  
 11 *Thornburgh*, 734 F.Supp. 195, 200 (E.D.Pa.1990).] Defendants are confusing their discretion  
 12 over *how* they resolve adjustment of status applications with their non-discretionary duty to  
 13 adjudicate. *See Dabone*, 734 F.Supp. at 200. In other words, while Defendants have discretion  
 14 to approve or deny an application to adjust status, they still have a mandatory, non-  
 15 discretionary duty to process Plaintiff’s Application. *See Yu*, 36 F.Supp.2d at 931. (“*All other*  
 16 *courts addressing this question have held that INS has a non-discretionary duty to process*  
 17 *application for LPR status as well as all other immigration applications*”)(Emphasis added).  
 18 See also *Am. Academy of Religion v. Chertoff*, No. 06 Civ. 588 (PAC), 2006 WL 1751254, at  
 19 \*16 (S.D.N.Y. June 23, 2006) (holding that the language stating that officials were to either  
 20 “issue or refuse” a complete visa creates a duty to adjudicate)). *Haidari v. Frazier*, No. 06-  
 21 3215, U.S. Dist. LEXIS 89177 (D. Minn. Dec. 8, 2006) (noting that while “the decision of  
 22 whether to *grant* or *deny* an adjustment application is discretionary...Plaintiffs are only asking  
 23 [the] Court to compel Defendants to make *any* decision.” (emphasis in original) Accordingly,  
 24 Defendants have a plain duty to adjudicate Plaintiff’s adjustment of status application.

## 22           (ii)     **Duty to act within a reasonable time**

23           Next, Defendants assert that they have not failed to act in a reasonable time in the  
 24 adjudication of these applications. Although Defendants are correct in stating that neither  
 25 statute nor regulation provides a timeliness requirement, previous Courts have held that  
 26 APA § 555(b) still imposes a duty to complete action on adjustment of status applications  
 27 within a reasonable time. *See Aboushaban*, 2006 WL 30410886 at \*2 (Defendants must  
 28 adjudicate within reasonable time); *Yu*, 36 F. Supp.2d 922, 932 (“Defendants owe Plaintiffs

1 a non-discretionary duty to complete processing of Plaintiffs' applications in a reasonable  
 2 time.") *See also Kim v. Ashcroft*, 340 F. Supp 2d 384, 393 (S.D.N.Y.2004) ("...although  
 3 there is no statutory or regulatory deadline by which the CIS *must* adjudicate an application,  
 4 at some point, defendants' failure to take any action runs afoul of section 555(b).") ([T]he  
 5 [US]CIS simply does not possess unfettered discretion to relegate aliens to a state of  
 6 'limbo,' leaving them to languish there indefinitely. This result is explicitly foreclosed by  
 7 the APA.") "The fact that neither the statute nor the regulations establish a specific deadline  
 8 does *not* change the character of the duty itself. While the substance of the decision whether  
 9 to grant or deny a petition obviously is discretionary, *the duty to process the application is*  
 10 *just as obviously ministerial.* Congress expected the executive branch to receive  
 11 applications of this kind and then to 'adjudicate' them to a decision." *Razaq v. Poulos*, NO.  
 C 26-2461 (N.D.Ca. 2007).

12 Plaintiff recognizes that the decision to whether to grant or deny Plaintiff's adjustment  
 13 of status is committed to the discretion of the Attorney General. Plaintiff also recognizes that  
 14 there is no statute or regulation mandating when and how the FBI completes the processing of a  
 15 name check. However, Plaintiff feels that the CIS has a clear duty to adjudicate the application  
 16 properly filed by the Plaintiff according to the laws of this country. Plaintiff respectfully  
 17 disagrees on the argument that the FBI can or should take an indefinite time to complete the  
 18 name check or that the Attorney General or FBI can or should take an indefinite time to  
 19 exercise the discretion delegated to them by law. A discretion taken to this extreme will be  
 20 arbitrary, capricious and not warranted by law. "A 'duty to decide' becomes no duty at all if it  
 21 is accompanied by unchecked power to decide when to decide." *Razaq v. Poulos*, NO. C 26-  
 22 2461 (N.D.Ca. 2007).

23 One of the main reasons that make America the greatest country in the world is our  
 24 great political system built upon the check and balance of the three branches of our  
 25 government. Plaintiff admits that "the remedy of mandamus is a drastic one, to be invoked  
 26 only in extraordinary situations." However Plaintiff prays this Court to recognize that this  
 27 case is exactly a drastic one that requires this Court's intervention. Without this Court's  
 28 intervention, Plaintiff and all other unlucky people who got stuck in this situation will be  
 left with no remedy whatsoever. The government feels that they can take as long as  
 whatever time they need, 5 years, 10 years or even longer, because there is no statute or

1 regulation that requires the Attorney General act on an application for adjustment of status  
 2 within a specific time period, nor do they require the FBI to complete a name check within a  
 3 specified time frame.

3                   **(iii) Reasonable time criteria - The “TRAC factors” analysis**

4                   A general timing provision for agencies is provided within the APA at U.S.C. §555(b),  
 5 which states that agency action should be concluded within a reasonable time. *See Forest*  
 6 *Guardians v. Babbit*, 174 F.3d 1178 (10<sup>th</sup> Cir. 1999). Where the governing statute specifies no  
 7 deadline for a governmental act, the Ninth Circuit has considered the following six factors,  
 8 known as the “TRAC factors” to help evaluate whether a government agency has unreasonably  
 9 delayed concluding a matter before it, in violation of the APA:

10                   (1) the time agencies take to make the decision must be governed by a “rule  
                       of reason” (2) where Congress has provided a timetable or other indication of  
                       the speed with which it expects the agency to proceed in the enabling statute,  
                       that statutory scheme may supply content for this rule of reason, (3) delays  
                       that might be reasonable in the sphere of economic regulation are less  
                       tolerable when human health and welfare are at stake, (4) the court should  
                       consider the effect of expediting delayed action on agency activities of a  
                       higher or competing priority, (5) the court should take into account the nature  
                       and extent of the interests prejudiced by the delay, and (6) the court need not  
                       “find any impropriety lurking behind agency lassitude in order to hold that  
                       agency action is unreasonably delayed.”

17                   *Razaq v. Poulos*, No. 06-2461, U.S. Dist. LEXIS 770 (ND. Cal. 2007) quoting *Indep.*  
 18                   *Mining Co., Inc. v. Babbitt*, 105 F. 3d 502, n. 7 (9<sup>th</sup> Cir. 1997). Another court in this District  
 19 has applied this analysis where a plaintiff asked the Court to compel USCIS to complete  
 20 adjudication of an adjustment application whether relief was granted under the Mandamus  
 21 Act or under the APA. *Ibrahim v. Chertoff* No. 06-2071-L May 25, 2007 U.S. Dist. LEXIS  
 22 38352.

22                   In the present case, applying the TRAC analysis leads incontrovertibly to the  
 23 conclusion that Defendants’ delay of almost four years in adjudicating Plaintiff’s adjustment  
 24 application is unreasonable as a matter of law. In addressing the “rule of reason” or  
 25 “Congressional expectation” factor, Plaintiff has noted and it is also undisputed by the  
 26 Defendants that the processing time at the USCIS for adjustment of status application is  
 27 approximately six months. Plaintiff’s application was filed on April 19, 2004. By USCIS’s  
 28 own standards, processing has been delayed for over three and half years. Further, in “The

1      Immigration Services and Infrastructure Improvements Act of 2000" Congress has stated its  
2      expectation that adjustment applications should be completed within 180 days after filing. 8  
2      U.S.C. §1571.

3           Even viewing facts in the light most favorable to Defendants', the Defendants' delay  
4      in adjudicating Plaintiff's application, without specific explanation for such delay, is  
5      unreasonable as a matter of law. The processing of Plaintiff's application has been  
6      suspended on name check clearance. The declarations submitted by Defendants state that  
7      the overwhelming majority of name checks are resolved within 60 days of submittal.  
8      Plaintiff's name check request was initiated over three years and nine months ago and  
9      remains pending. Yet the Defendants have failed to provide an explanation on the delay  
10     that is particularized to the Plaintiff. Further, in determining what constitutes a reasonable  
11     time in which USCIS should complete processing an adjustment application, a Court may  
12     and should consider the complexity of the matter. However, Defendants have not challenged  
12     Plaintiff's eligibility for permanent residence in the United States. They offered no evidence  
13     to show that Plaintiff's application is a particularly complex matter, either by way of  
14     presenting issues which require further investigation or by Plaintiff's failure to provide, or  
15     delay in providing, all the information necessary to establish her eligibility for the benefit  
16     sought. *Compare Razaq v. Poulos* 2007 WL 61884 (N.D. Cal. Jan. 8, 2007), *Saleh v. Ridge*  
17     367 F. Supp. 2d at 511-512 (S.D.N.Y. 2005); *Bartoloni v. Ashcroft* 226 F. Supp. 2d 350,  
18     354 (D. Conn. 2002). Therefore Defendants' delay in adjudicating Plaintiff's application is  
19     unreasonable as a matter of law.

20           In acknowledging that delays that might be reasonable in the sphere of economic  
20     regulation are less tolerable when human health and welfare are at stake, Courts in this  
21     District have recognized that an adjustment applicant suffers significant restrictions on his  
22     basic welfare when he is delayed in obtaining a decision on an application for permanent  
23     residency. An inability to obtain permanent resident status affects important rights including  
24     but not limited to the ability to travel abroad freely, to be employed without restriction, and  
25     to accrue time as a lawful permanent resident to become eligible to apply for citizenship.  
26     *Singh v. Still* 2007 06-2458 EMV 2007 U.S. Dist. LEXIS 16334 January 8, 2007. *See also*  
27     *Ngwanyia v. Ashcroft* 302 F. Supp. 2d 1076, 1079-80 (D. Minn. 2004). In the instant case,  
28     Plaintiff has been compelled to apply for multiple H1B extensions and advance parole

1 document over the 45 months that her application has been pending and has lost valuable  
2 time as a lawful permanent resident during which she would have been working toward  
3 eligibility to apply for naturalization. After this petition was filed on September 12, 2007,  
4 Plaintiff had to once again apply for H1B extension in December 2007 because her H1B  
was to expire on March 1, 2008.

5 Plaintiff readily concedes that national security is an important competing priority.  
6 However, the mere invocation of national security is insufficient to make Defendants'  
7 almost four years delay reasonable per se. *Singh v. Still* No. 06-2458 EMC 2007 U.S. Dist.  
8 LEXIS 16334 January 8, 2007 at \*16. In the present case, Defendants have presented no  
9 evidence whatsoever to suggest that national security concern are implicated in Plaintiff's  
application or that Plaintiff's application is complex in any other way. Further, the USCIS  
10 Ombudsman's 2007 Annual Report to Congress reiterates the point made in his 2006 Report  
11 that the FBI name checks are of limited value to national security.

12 The Ombudsman agrees with the assessment of many case workers and  
13 supervisors at USCIS field offices and service centers that the FBI name check  
14 process has limited value to public safety or national security, especially because  
15 in almost every case the applicant is in the United States during the name check  
16 process, living or working without restriction. . . . Delays in the name check  
17 process actually prolong an individual's presence in the United States while the  
check is pending. In this sense, the current USCIS name check policy may  
increase the risk to national security by extending the time a potential criminal or  
terrorist remains in the country.

18 [http://www.dhs.gov/xlibrary/assets/CISOMB\\_Annual\\_Report\\_2007.pdf](http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf). See  
19 USCIS Ombudsman's 2007 Report to Congress at 40.  
20 Therefore it is the unreasonable delay that may impose a risk against the national security  
21 and it is totally up to the Defendants' responsibility to implement a more efficient system to  
22 speed up the process required by national security.

23 In addition, while the Court should balance Plaintiff's right to the timely processing  
24 of her adjustment application against national security issues, nothing in the record shows  
25 that Plaintiff poses a risk to national security. Plaintiff Xiling Chen has been entitled to  
26 reside in and work in the U.S. since March 2000. She has continuously maintained lawful  
status in the United States and has no arrest record. She has been employed as a Staff  
27 Engineer with TIBCO Software Inc. in Palo Alto, California for the past seven years.  
28 Plaintiff would be no more a danger to the security of this country after she is granted

1 adjustment of status than she has been for the past seven years while the government  
 2 ignored her and was totally unconcerned that she was residing in this country and going  
 3 about her daily business. If the government does find something at any later date that would  
 4 have actually been a basis for denying adjustment, it can always initiate removal  
 5 proceedings against Plaintiff from the United States or rescission of Plaintiff's permanent  
 6 residency on the grounds that she was inadmissible at the time of admission. See 8 U.S.C.  
 7 §1227 and 1256. Defendants have five years to bring any such rescission proceeding --and  
 8 there is no time limit on bringing such a removal proceeding. 8 U.S.C. § 256(a); Matter of  
Pereira, 19 I. & N. Dee: 169 (BIA 1984).

9 In conjunction with their argument based on national security, Defendants implicitly  
 10 raise an explanation of a large workload and limited resources. They argue that the  
 11 substantial increase in requests for name checks since 9/11 is sufficient to excuse the delay  
 12 in completing adjudication of Plaintiff's application and should, as a matter of law, deprive  
 13 her of the right to seek relief under the mandamus statute or the APA. This argument  
 14 should fail. “[D]elays of a significant magnitude, particularly when they occur over  
 15 uncomplicated matters of great importance to the individuals involved, may not be justified  
 16 merely by assertions of overwork.” *Yu*, 36 F. Supp. 2d at 934 (citations omitted); see also  
 17 *Forest Guardians v. Babbitt*, 164 F.3d, 1261, 1273-1274 (10<sup>th</sup> Cir. 1998) (once the court  
 18 determines that there has been an unreasonable delay, the court is required to issue a  
 19 mandatory injunction and cannot consider the agency’s lack of resources in fashioning a  
 20 remedy. Further, Defendant CIS cannot shift responsibility for its breach of duty to the FBI.  
 21 CIS has contracted out the task of completing security and background checks to the FBI.  
 22 The FBI’s duty is therefore subsumed under that of CIS and both are arms of the federal  
 23 government. *Paunescu*, 76 F. Supp. 2d at 903 n.2.

24 What constitutes a reasonable time is a mixture of quantitative and qualitative factors. A  
 25 court in this District has found that a more than two year delay was unreasonable as a matter of  
 26 law. *Gelfer v. Chertoff* 2007 WL 902382 at 2. Other courts have found 6-24 months delay in  
 27 processing adjustment of status to be unreasonable. *Galvez v. Howerton*, 503 F.Supp. 35, 39  
 28 (C.D.Cal.1980) (holding a six-month delay unreasonable); *Paunescu v. INS*, 76 F.Supp.2d 896,  
 90 1-02 (N.D.Ill.1999) (holding a ten-month delay unreasonable); *Yu v. Brown*, 36 F.Supp.2d  
 922, 932 (D.N.M.1999) (holding a two-and-a-half year delay unreasonable).

1        While quantitative measures are a factor to be considered, reasonableness of delay is  
2 to be determined on a case-by-case basis, depending on the complexity of the matter or  
3 whether the plaintiff has contributed to the delay. However, nothing in the record shows  
4 why Plaintiffs adjustment application might be complex or otherwise justify a delay of  
5 almost four years in processing. While Defendants have stated that Plaintiff's name check  
6 request was electronically submitted to the FBI on April 29, 2004, nothing in the record  
7 shows that anything was done subsequently to advance the clearance process. Delay in  
8 completing the name check on Plaintiff's application has far exceeded the normal time  
9 frame and yet Defendants have offered no explanation whatsoever as to why this should be  
10 so. The Defendants claim that the Agencies are exercising every effort to address the delay,  
11 and that "the FBI and USCIS are taking active steps towards completing the background  
12 checks for adjudication of her application." Yet they have failed to show that they have  
13 made reasonable efforts to complete Plaintiff's adjustment of status application. Defendants  
14 have given no indication of when the clearance will be completed or what has caused the  
15 delay. Nothing in the declarations submitted or elsewhere in the record sheds any light on  
16 why Plaintiff's application might be so complex as to explain such delay. The Mandamus  
17 Act and the APA provide a check on USCIS for its failure to fulfill its duty to the plaintiff,  
18 namely to adjudicate her adjustment application within a reasonable time.

19                  **(iv) Writ of mandamus is the only remedy**

20        For purpose of mandamus relief, Plaintiff must demonstrate that he or she has no  
21 other adequate remedy available to them. The Plaintiff has no such a remedy. It is true that  
22 an alien who has applied for adjustment of status may apply for and obtain employment  
23 authorization and most applicants for adjustment of status may also apply for advance  
24 parole to enable them to travel abroad during the pendency of their application. However  
25 there are many problems associated with the indefinite pendency of the adjustment of status  
26 application. Besides the financial burden of having to pay the application fees year after  
27 year, the most troublesome problem is the time associated with obtaining the employment  
28 authorization and advance parole from the CIS. Both employment authorization and  
advance parole take an average of three months to be granted, and just as correctly pointed  
out by the Defendants, the CIS has exactly the same discretion to decide whether to grant it  
or to deny it, and there is no statute or regulation that mandates the CIS act on the

1 employment authorization and advance parole applications within a specific time frame. If  
 2 the applicant got unlucky and his or her application for employment authorization or  
 3 advance parole takes longer than the average three months, he or she will need to stop  
 4 working or cannot travel for his or her employment on assignments to be conducted abroad.

5 The Defendants claim FBI is proceeding in an orderly and timely fashion and on a  
 6 “first in, first out” basis. And if the Court were to grant Plaintiff’s requested relief, it would  
 7 compel the processing of the applications out of order and unfairly favor the “more litigious  
 8 applicants”. *See Defendants’ Motion to Dismiss.* This assertion of “orderly and timely  
 9 fashion” is totally contrary to the facts. As stated in the Defendants argument, only 10  
 10 percent out of all name check requests are the subjects of the prolonged delay. Compared to  
 11 the remaining 90% applicants, these 10% applicants are the “first in” ones but are  
 12 unfortunately not “first out”. These fellows are held in the interminable pendency of their  
 13 applications and cannot make plans for their lives. Plaintiff is NOT the “more litigious  
 14 applicant”. In fact Plaintiff is greatly depressed by the court fee and attorney fees she has to  
 15 pay from her hard earned salary, in addition to the anxiety over her application which has  
 16 been pending for 45 months! Mandamus action provides the aggrieved party like Plaintiff  
 17 the last resort. If the relief of mandamus were unavailable as a matter of law, Defendants  
 18 could fail to exercise their duties indefinitely.

19 It is noted that the normal processing time for an *I-485 Application to Register*  
 20 *Permanent Residence or Adjust Status* is approximately 6 months. In particular, Plaintiff  
 21 Xiling Chen applied for adjustment of status as a derivative applicant together with her  
 22 husband Zhenru Ding and on the same day, her application is still pending, now three years  
 23 after her husband became a permanent resident of the United States. Plaintiff Xiling Chen  
 24 has waited for almost four years!!! She has waited her turn in line.

25 It is undisputed that Plaintiff has waited her turn in line for three years and nine  
 26 months. It is undisputed that Plaintiff has complied with all the requirements for this  
 27 application. It is undisputed that it is the expectation of Congress that adjustment  
 28 applications shall be completed within 180 days from submittal. Declarations submitted by  
 the Defendants in this matter state that it is normative to complete the vast majority of name  
 checks within 60 days of submittal and the only issue preventing Defendants from  
 completing adjudication of Plaintiff’s application is completion of her name check. In the

1 face of these undisputed facts, Defendants have provided no evidence whatsoever to explain  
 2 the delay in processing Plaintiff's application. The Plaintiff has been adversely affected by  
 3 the delay in adjudication of her 1-485 application despite the fact that she has met the  
 4 statutory requirements for eligibility. She has been damaged by being deprived of a decision  
 5 for nearly four years; by being unable to plan or pursue a course of action in the United  
 6 States in her professional or personal life because her adjustment application remains  
 7 pending, and by being compelled to repeatedly apply and pay for H1B extension in order to  
 8 stay employed and to apply for travel documents to visit her 85-year-old father in China.  
 9 Without this Court's order, Plaintiff's application is likely to continue pending without a  
 decision indefinitely. Plaintiff has no other adequate remedy.

10

### CONCLUSION

11

12 Plaintiff has a clear right to the relief requested and Defendants have a clear duty to  
 13 adjudicate her application for adjustment of status in a reasonable time. No other adequate  
 14 remedy is available. Relief under the Mandamus Act and the APA is therefore warranted.  
 15 The evidence considered in the light most favorable to the government, demonstrates, as a  
 16 matter of law, that Defendants have unreasonably delayed in processing Plaintiff's  
 17 application for adjustment of status. Plaintiff's motion for summary judgment should be  
 18 granted and Defendants' cross motion should be denied. The Court should order that  
 Defendants adjudicate Plaintiff's applications within 10 days.

19

Dated: March 3, 2008

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Respectfully submitted,

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/s/

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Tricia Wang  
 Attorney for Plaintiff

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